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8 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE  
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10 ULTIMATE IMAGE, INC. and TOI, USA,

11 Plaintiffs,

12 v.

13 WILLIAM M. PEDERSEN, *et al.*,

14 Defendants.  
15

Case No. C05-1572 RSL

ORDER GRANTING MOTION  
FOR VOLUNTARY DISMISSAL

16 This matter comes before the Court on plaintiffs' "Motion for Voluntary Dismissal of  
17 Action Without Prejudice." (Dkt. #69). Ultimate Image, Inc. and TOI, USA ("plaintiffs") ask  
18 this Court to voluntarily dismiss their claims against all defendants. The defendants who filed  
19 counterclaims respond that dismissal will lead to a prejudicial result. For the reasons stated  
20 herein, the motion by plaintiffs is granted.

21 **I. FACTS AND PROCEDURAL HISTORY**

22 Plaintiffs seek to recover damages from certain former employees and clients for a  
23 panoply of federal and state causes of action. In their second amended complaint, plaintiffs  
24 asserted nine causes of action. Against their former employees, plaintiffs alleged: (1) common  
25 law conspiracy; (2) violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030(g)); (3)  
26 violation of the Lanham Act (15 U.S.C. § 1125); (4) copyright infringement; (5) conversion; (6)

27 ORDER GRANTING MOTION  
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violation of the Washington State Unfair Business Practices Act (RCW 19.86); and (7) violation of their duty of loyalty. Against their former clients, plaintiffs alleged (1) breach of contract and (2) defamation. Foothills Toyota and Lynwood Honda (“defendants”), counterclaimed for breach of contract and Rule 11 sanctions. Upon discovering that the federal causes of action would not yield sufficient remedy, plaintiffs moved to voluntarily dismiss all of the claims under Fed. R. Civ. P. 41(a)(2). Defendants object to the motion anticipating that dismissal of the claims will subject them to parallel litigation in state court.

## II. DISCUSSION

### A. Rule 41(a)(2)

Plaintiffs argue that the Court should dismiss their claims under Rule 41(a)(2) which specifically provides:

[A]n action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff’s motion to dismiss, the action shall not be dismissed against the defendant’s objection unless the counterclaim can remain pending for independent adjudication by the court.

Fed. R. Civ. P. 41(a)(2). The decision to grant the motion to dismiss rests within the discretion of the court. Sams v. Beech Aircraft Corp., 625 F.2d 273, 277 (9th Cir. 1980).

### B. Jurisdiction over counterclaims

The court may dismiss the claim if the counterclaim possesses an independent basis for adjudication. Fed. R. Civ. P. 41(a)(2). Where the counterclaim revolves around state law, diversity jurisdiction may provide an appropriate basis. Pioche Mines Consol. v. Fidelity-Philadelphia Trust Co., 206 F.2d 336, 337 (9th Cir. 1953). Here, the parties to the counterclaim satisfy the citizenship requirement. Plaintiff Ultimate Image, Inc. is a California corporation with its principal place of business in California. TOI, USA is a Nevada corporation with its principal place of business in California. The counterclaiming defendants are citizens of Washington State. Although the citizenship of the parties satisfies diversity jurisdiction, the

1 counterclaims fail to meet the required amount in controversy.<sup>1</sup> Thus, the state law  
2 counterclaims lack an independent basis for adjudication.

3       However, the court may dismiss plaintiffs' claims if the counterclaims are compulsory.  
4 In its discretion, the court may retain jurisdiction over any compulsory counterclaims regardless  
5 of whether an independent basis for adjudication exists. Hamilton v. Firestone Tire & Rubber  
6 Co., 679 F.2d 143, 146 n.3 (9th Cir. 1982). A compulsory counterclaim "arises out of the same  
7 transaction or occurrence that is the subject matter of the opposing party's claim[.]" Fed. R.  
8 Civ. P. 13(a). The Ninth Circuit applies the liberal "logical relationship" test to determine  
9 "whether the essential facts of the various claims are so logically connected that considerations  
10 of judicial economy and fairness dictate that all the issues be resolved in one lawsuit." In re  
11 Pegasus Gold Corp., 394 F.3d 1189, 1197 (9th Cir. 2005) (citing Pochiro v. Prudential Ins. Co.,  
12 827 F.2d 1246, 1249 (9th Cir. 1987)).

13       At present, the logical relationship test renders the counterclaims compulsory since they  
14 share the same factual basis as plaintiffs' claims. In pertinent part, plaintiffs argue that  
15 defendants withheld payment in violation of an alleged agreement between the parties. See Dkt.  
16 #62 at 15. In turn, defendants counterclaim that their failure to pay was provoked by plaintiffs'  
17 alleged failure to meet its obligations under the same contract. See Dkt. ##19, 33. Thus, the  
18 Court may extend supplemental jurisdiction over defendants' compulsory counterclaims.

19       Ninth Circuit case law places the decision to exercise jurisdiction over compulsory  
20 counterclaims in the discretion of the court. When a case loses its federal substance, the court

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22       <sup>1</sup> Each defendant seeks a refund of \$30,000.00 plus interest from plaintiffs based upon  
23 alleged agreements each defendant had with plaintiffs. See Dkt. ## 19, 33. Accordingly, their  
24 claims are not subject to aggregation. Gibson v. Chrysler Corp., 261 F.3d 927, 943-44 (9th Cir.  
25 2001) (finding that multiple plaintiffs may not aggregate their claims to satisfy the amount in  
26 controversy requirement where their claims are separate and do not implicate the same  
undivided interest). Furthermore, neither defendants' counterclaims nor their response to  
27 plaintiffs' motion for voluntary dismissal alleged an amount in controversy for the purposes of  
28 establishing diversity jurisdiction. See Dkt. ## 19, 33 and 70.

1 may decline jurisdiction over the remaining state law compulsory counterclaims. In Re Nucorp  
2 Energy Securities Litigation, 772 F.2d 1486, 1491 (9th Cir. 1985). Considerations of “judicial  
3 economy, convenience and fairness to the litigants” factor into the court’s decision to exercise  
4 supplemental jurisdiction. In Re NuCorp, 772 F.2d at 1491 (citing Hagans v. Lavine, 415 U.S.  
5 528, 546 (1974)). In the present matter, retention of the counterclaims likely invites parallel  
6 litigation in both state and federal court relating to state law issues. Therefore, notions of  
7 judicial economy do not favor exercising jurisdiction over the counterclaims. In addition,  
8 abstention from adjudication of the counterclaims does not offend fairness considerations. The  
9 parties may build upon their pretrial materials should either party decide to avail itself of the  
10 state court. In light of the circumstances, the Court declines to extend supplemental jurisdiction  
11 over defendants’ counterclaims.

12 **C. Rule 11 sanctions**

13 Defendants’ counterclaim indicated an intent to seek Rule 11 sanctions against plaintiffs.  
14 It is recognized that “a voluntary dismissal does not limit the court’s power to impose sanctions  
15 against plaintiff under Fed. R. Civ. P. 11 for filing groundless claims.” Burnette v. Godshall,  
16 828 F. Supp. 1439, 1444 (N.D. Cal. 1993) (citing Cooter & Gell v. Hartmarx Corp., 496 U.S.  
17 384, 395 (1990)). Accordingly, the Court retains jurisdiction to consider a post-dismissal  
18 motion for Rule 11 sanctions.<sup>2</sup>

19 **D. Prejudice to the defendants**

20 The purpose of voluntary dismissal is to allow the plaintiff to dismiss its own action so  
21 long as the defendant does not suffer prejudice. Stevedoring Servs. of Am. v. Armilla Int’l B.V.,  
22 889 F.2d 919, 921 (9th Cir. 1989). Thus, the court must determine whether granting a voluntary  
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24 <sup>2</sup> Defendants are cautioned, however, that if they pursue a motion for Rule 11 sanctions,  
25 they must demonstrate a clear violation of the Rule. Furthermore, in the interest of judicial  
26 economy and to prevent parallel litigation, the Court will not decide a Rule 11 motion until the  
27 case is resolved either in this or another forum.

1 dismissal will subject the defendants to plain legal prejudice. Hamilton, 679 F.2d at 145. The  
2 Ninth Circuit defines plain legal prejudice as “just that - prejudice to some legal interest, some  
3 legal claim, some legal argument.” Westlands Water Dist. v. United States, 100 F.3d 94, 97 (9th  
4 Cir. 1996). Typically, a court denies dismissal where the plaintiff moves to dismiss on the eve  
5 of trial or at the conclusion of discovery. 9 Wright & Miller, Federal Practice & Procedure §  
6 2364 (1995).

7 Defendants argue that dismissal will result in plain legal prejudice based upon the  
8 “significant expense” they invested in the case. See Response at 3. They also contest dismissal  
9 based upon the likelihood of defending the same action in state court. Ninth Circuit case law  
10 compels a different conclusion. First, defendants cannot demonstrate plain legal prejudice with  
11 a simple statement that significant costs have been incurred. Hamilton, 679 F.2d at 145. The  
12 case is still in the early stages of pre-trial preparations with only written discovery completed  
13 and no depositions taken. See Reply at 3. Second, the “mere inconvenience of defending  
14 another lawsuit does not constitute plain legal prejudice.” Hamilton, 679 F.2d at 145. Whether  
15 or not plaintiff may gain a tactical advantage from instituting a second suit does not enter the  
16 calculus for plain legal prejudice. Hamilton, 679 F.2d at 146 n.1. In sum, granting plaintiffs’  
17 dismissal does not give rise to plain legal prejudice against defendants.

#### 18 **E. Terms and Conditions**

19 The court may attach conditions to a voluntary dismissal in order to protect the defendant.  
20 Westlands Water Dist., 100 F.3d at 97. An award of costs and attorney’s fees typically follows  
21 a grant of voluntary dismissal but the court is not obligated to do so. Stevedoring, 889 F.2d at  
22 921. The costs and fees awarded should only cover work that the defendant cannot use in later  
23 litigation of the same claims. Westlands Water Dist., 100 F.3d at 97. The court may retain  
24 jurisdiction to hear collateral issues like the imposition of costs and fees after the voluntary  
25 dismissal of an action. Cooter & Gell, 496 U.S. at 395-396. While defendants have not  
26 submitted an application for costs, the Court retains jurisdiction to consider a post-dismissal

1 motion for costs.<sup>3</sup>

2 **III. CONCLUSION**

3 For all of the foregoing reasons, the Court GRANTS plaintiffs' Motion for Voluntary  
4 Dismissal (Dkt. #69) and DISMISSES defendants' counterclaims without prejudice.

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6 DATED this 20th day of November, 2006.

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8 Robert S. Lasnik  
9 United States District Judge  
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24 <sup>3</sup> Defendants should present to the Court a detailed application for costs and fees incurred  
25 as a result of this dismissal. In response, if plaintiffs argue that all or some portion of  
26 defendants' fees and costs will be of value in subsequent litigation, plaintiffs must disclose  
27 whether they are in fact pursuing this matter in another forum. Defendants may then reply to  
28 any of plaintiffs' assertions.